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In the Matter of)
Policies and Rules Concerning)
Unauthorized Changes of Consumers') CC Docket No. 94-129
Long Distance Carriers)

To: The Commission

COMMENTS

SPRINT COMMUNICATIONS CO.

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COMMENTS OF SPRINT

Sprint Communications Co. hereby submits its comments in response to the Commission's November 10, 1994 Notice of Proposed Rulemaking in the above-captioned docket (FCC 94-292).

I. INTRODUCTION AND SUMMARY

In the NPRM, the Commission proposes three specific rule changes: (1) a codification of the requirements for letters of agency; (2) a prohibition on combining the LOA with any other promotion or inducement; and (3) a prohibition on "negative option" LOAs. In addition, the Commission seeks comment on a variety of other issues relating to LOAs and PIC changes. Sprint supports the rules proposed by the Commission. It believes that the Commission's requirements with respect to the contents of LOAs should be codified in the Code of Federal Regulations, that negative option LOAs should be prohibited, and subject to a clarification discussed below, that to avoid possible confusion or misunderstanding on the part of

consumers, LOAs should be separate from other promotional inducements. However, with respect to the other issues raised by the NPRM, Sprint, by and large, does not believe there is need for detailed regulation of carrier practices through Commission-prescribed rules or procedures. With respect to many of these other issues, the NPRM is not specific about the precise nature of the Commission's concern, the number of consumer complaints which may have prompted inclusion of the particular issue in the NPRM, or the number of carriers whose practices are of concern to the Commission. In particular, the suggestion that IXCs should not be able to accept PIC change orders through customer-initiated 800 calls or should have to make a separate verification of such PIC changes is without any factual predicate in the NPRM and would have both anti-consumer and anti-competitive effects. To the extent problems are not wide-spread, but instead arise with respect to particular IXCs, the public interest would be better served by using the Commission's enforcement powers to address specific practices of individual carriers rather than imposing a new layer of regulation on the PIC change process for all carriers.

II. THE PROPOSED RULES

In the NPRM, the Commission proposes to add a new §64.1150 to the Rules that would codify the content requirements for LOAs, would prohibit negative option LOAs,

and would require the physical separation of the LOA from any other promotion or inducement to change carriers. Sprint supports the codification of the LOA contents in the Rules. However, further refinement of the Rules is necessary to avoid needless confusion and ambiguity. As the Commission observed (at ¶9), § 64.1100 of the Rules contains LOA requirements for sales made through outbound telemarketing. The Commission does not propose to amend § 64.1100. However, in ¶10, the Commission asserts that the proposed § 64.1150 "restates and organizes the LOA requirements of the Allocation Order and the PIC Verification Order into one standard rule." Furthermore, paragraph (a) of the proposed rule states that any necessary written authorization must be in the form of a "letter of agency as specified in this section. Any letter of agency that does not conform with this section is invalid."

(Emphasis added.) These provisions would suggest that the "simplified" (see ¶19) LOA requirements in § 64.1100 would no longer suffice. If that section is left unchanged, then there will be two different rules presubscribing LOA requirements, which will needlessly interject ambiguity into the issue of what constitutes a valid LOA. Sprint proposes that the Commission correct this anomaly by amending § 64.1100(a) to read as follows:

The IXC has obtained the customer's
written authorization in a form that
meets the requirements of § 64.1150;
or

In addition, the Commission should be aware that two states (Florida and South Carolina) have proposed or adopted rules governing the language, type size/style to be used in LOAs.¹ If each state imposed its own LOA requirements, there would be an obvious potential for conflicts between state and federal requirements. Furthermore, to comply with fifty different formulations of an LOA would result in added costs and administrative burdens on IXC's having multi-state operations. The Commission may wish to consider preemption of state-imposed LOA requirements to avoid such conflicts and added costs.

The second requirement in the proposed rule (paragraphs (b) and (c)) is that the LOA must be a separate document and cannot be combined with inducements of any kind on the same document. As noted above, Sprint concurs in this proposed rule as well. Combining the LOA with promotional inducements, such as a vacation contest, the endorsement portion of a check that can be cashed by the consumer, etc., has the potential

¹ On December 6, 1994, the Florida PSC, in Docket No. 941190-TL (Proposed Revisions To Rule 25-4.118, F.A.C., Interexchange Carrier Selection), adopted mandatory language for a portion of the LOA and has specified that the mandated language shall be printed in bold type that is at least twice the size of any other type appearing on that page. This rule has not yet become effective and is subject to reconsideration. The South Carolina PSC staff, in Docket No. 94-559-C, have proposed a mandatory title for LOAs and an additional requirement that LOAs include an 800 number for customer inquiries. Testimony of James M. McDaniel, Chief, Telecommunications Dept., Utilities Div., South Carolina PSC, December 21, 1994.

for outright deception, or at the very least for leading to misunderstandings between consumers and carriers, and subject to one clarification, Sprint agrees with the Commission's tentative findings that such practices should be prohibited.

The one clarification Sprint seeks relates to the treatment of PIC change charges. Sprint, like many other IXC's, often reimburses new customers for the PIC change charges imposed by the LECs. In order to effectuate such reimbursement, Sprint, in post-sale mailings to new customers, sometimes combines an LOA with a certificate redeemable not by the consumer, but only by Sprint or the customer's LEC, that will serve to credit either the customer's local phone bill or long distance bill with the \$5.00 PIC change charge. Using a certificate for this purpose is an administratively efficient means of effectuating the credit for the PIC change charge, and combining it with the LOA is an inducement to new customers, who have previously agreed to change carriers, to complete and return the LOA that is sent to them in a post-sale mailing.² Since this process occurs after the sale has been made, and because the certificate can only be used as a credit on the customer's phone bill,³ it should not be viewed

² The Commission has long been aware that customers who verbally commit to changing carriers often neglect to return the LOA to their new carrier. See, Access and Divestiture Tariffs, 101 FCC 2d 935, 942 (CCB, 1985).

³ Compare NPRM, ¶6 (referring to consumer complaints regarding "checks made payable to the consumer").

as the type of inducement to change carriers that the proposed rules seek to prohibit. Furthermore, it relates directly to the content of the LOA -- i.e., to the customer's understanding as to whether there will be a charge imposed for changing carriers. Since the Commission has ruled that only an LOA can resolve a PIC change dispute,⁴ it is reasonable to combine the LOA with the credit for the PIC change charge. Otherwise, a customer could turn in a credit certificate for the PIC change charge but neglect to return the LOA, and the IXC would be unable to "prove" that the PIC change was authorized if a dispute arose.

Thus, Sprint believes this practice should not fall within the prohibitions of the proposed rules. To this end, Sprint suggests that the first sentence of proposed §64.1150(b) read as follows:

The letter of agency shall be a separate document whose sole purposes are to confirm that an interexchange carrier is authorized to initiate a primary interexchange carrier change and to effectuate a credit for any charges that may be imposed by the local exchange carrier for such change.

In addition, §64.1150(c) should be modified as follows:

The letter of agency shall not be combined with inducements of any kind on the same document other than a credit payable to the long distance carrier or local exchange carrier for the charge

⁴ PIC Verification Reconsideration Order, 8 FCC Rcd 3215, 3216 (1993).

imposed by local exchange carriers for changing the primary interexchange carrier.

Finally, paragraph (e) of the proposed rule would prohibit negative option LOAs. Sprint supports this provision.

III. OTHER ISSUES

In addition to the specific rule changes proposed by the NPRM, the Commission asked for comment on a variety of other LOA and PIC-change related issues, but did not propose any specific rule changes. It is Sprint's view that these other issues do not give rise to problems of general applicability that must be addressed through promulgation of additional rules binding on all IXCs. If there are particular instances where an individual IXC's practices are unreasonable, the Commission should invoke its enforcement jurisdiction, rather than burden the entire industry with additional regulations that may hamper legitimate activities and practices of other carriers. Nonetheless, as will be discussed below, there are some areas where the Commission can and should use this docket to give guidance to the industry on what practices are or are not reasonable.

The first issue the Commission raises (§14) is whether it should adopt rules requiring that the LOA contain only the name of the carrier that directly provides the service to the customer, or alternatively, whether other carriers' names can

be included if their roles are clearly described. Allowing resellers to use the name of the underlying carrier or carriers whose transmission services they resell can give rise to instances where resellers confuse the customer into thinking that they are becoming customers of the underlying carrier when in fact that is not the case. This can lead to customer confusion, PIC change disputes, and customer dissatisfaction with one or more of the carriers involved. Sprint's tariffs prohibit resellers from using Sprint's name without its expressed written consent, and Sprint submits that it and other IXC's are entitled to protect their names in this fashion. In addition, Sprint believes that § 64.1150, as proposed in the NPRM, clearly contemplates that only one IXC can be named in the LOA. Obviously, that IXC must be the one that has the direct carrier relationship with the customer. Sprint urges the Commission to make this clear in its final order in this proceeding, but does not believe that any additional rules are required.

Perhaps the greatest source of confusion that now exists in this respect occurs when a consumer changes his or her service to a switchless reseller that does not have its own CIC code, and the local exchange carrier, either through its customer service representatives or through statements printed on the LEC's bill to the consumer, informs the consumer that his or her new long distance carrier is the underlying carrier

whose CIC code was used for processing the switchless reseller's order. In such instances, the consumer may understandably be confused when he or she sees that, e.g., Sprint or AT&T or MCI is now the consumer's PIC when in fact the consumer never intended to change to such carrier. The resulting PIC change disputes needlessly consume the time, energy and resources of the underlying IXCs and disrupt the relationship between the consumer and the switchless reseller. The Commission should make clear that if the facilities-based IXC, in submitting PIC change orders to the LEC, informs the LEC that particular numbers are associated with a reseller and not the underlying IXC, it is an unreasonable practice for the LEC to inform consumers, in any fashion, that the underlying carrier is the consumers' PIC. Sprint would not object to formal rules to that effect, but believes that a clear statement in its final order in this proceeding to that effect should be sufficient to curb the confusing practices engaged in by some LECs today.

Another issue on which the Commission seeks comment is whether business and residential customers should have different LOA requirements. See NPRM, ¶15. It is not clear what different requirements the Commission has in mind, but it appears that the Commission is concerned that a business LOA may be returned by a person that has no authority to order long distance service for the business. Sprint is not aware

that this is a widespread problem requiring imposition of additional regulations. Furthermore, there is no difference between business and residential customers in this regard: in the residential context, a family member that does not normally pay the telephone bill may authorize a PIC change and neglect to tell the family member who is responsible for paying the bill. Such problems, whether they arise in the residential or business context, are problems that are internal to the customer, and should not be addressed by imposing additional requirements on interexchange carriers. Businesses (and households) have the responsibility for seeing that only properly authorized persons execute PIC change orders.

The next issue raised in the NPRM (at ¶16) is whether customers who use optional calling plans that include fixed monthly charges should be absolved from paying those charges where they have been switched to an unauthorized carrier. Under established industry procedures, each IXC is notified when one of its customers has changed his or her PIC to another carrier, whether or not that change was intended by the consumer. This notification should be sufficient for the previous carrier to discontinue billing the customer for any fixed monthly charges to which the customer may be subject under the optional calling plan. Sprint understands that some IXCs may interpret their optional calling plans as remaining

in force even after a customer has changed his or her PIC, on the theory that the customer can still use that carrier by dialing 10XXX or using a calling card, etc. Sprint believes it is unreasonable to make a customer subject to a carrier's optional calling plan charges in perpetuity, and that the best evidence of a customer's intent to discontinue such a plan is a PIC change. Sprint believes that clear policy direction in this proceeding, coupled with enforcement action, should be sufficient to curb contrary practices, but if the Commission believes that regulations are necessary for this purpose, Sprint would not object to adoption of a formal rule to that effect. However, if the Commission does enact such rules, it should apply such rules only to optional calling plans in which a customer agrees to pay a fixed monthly charge in return for, e.g., volume discounts, and not to term plans that require a commitment by a customer to take service for a fixed period of time and impose termination liabilities on customers if they cancel prematurely. Clearly, customers should be liable for reasonable termination charges if they violate their end of the bargain by leaving a term plan prematurely.

Another issue raised by the NPRM (§17) is whether adjustments to long distance charges should be made for consumers who are victims of unauthorized PIC conversions. The Commission asks for comment on whether consumers should be liable for the total amount billed by the unauthorized IXC,

the amount that would have been charged by their previous IXC, or nothing at all. The Commission's past policy has been that consumers are liable for any long distance calls they make using the unauthorized carrier. See, Consumer Alert: Unauthorized Changes in Long Distance Carriers, Public Notice dated November 2, 1990. Sprint believes consumers should be liable for the reasonable charges due to a long distance carrier even if the consumer believes that the conversion to that carrier was unauthorized. A policy of forgiving such charges entirely would encourage widespread fraud by unscrupulous customers who would switch from one carrier to another, but deny that they had ever done so in order to escape liability for any long distance charges that they incur. While a requirement that such charges should be no greater than those that would have been imposed by the customer's original carrier is attractive in theory, the ever-increasing number of optional calling plans in place and the number of long distance carriers in the industry make it a practical impossibility to comply fully with such a requirement. If the consumer believes that the unauthorized carrier's charges are excessive, the consumer has recourse to that carrier's billing adjustment procedures in the first instance, and if the matter cannot be resolved satisfactorily on that level, consumers have a right to avail themselves of the Commission's complaint processes. In view of all the

above, no departure from the Commission's present policy is called for.

The Commission also seeks comment (in ¶18) on whether special rules should be imposed for bilingual or foreign language LOAs. The only specific problem mentioned in the NPRM is that there have been instances where only some portions of an LOA appear in the foreign language. At the same time the Commission asked for comments on this issue, it pointed out (n.28 at ¶18) that it intends its proposed rules to apply to any bilingual or foreign language LOAs. That being the case, no special regulations on foreign language or bilingual LOAs are necessary. Since all LOAs must satisfy the requirements set forth in proposed § 64.1150, a foreign language LOA that includes only some of the required provisions would clearly violate the rule regardless of whether an English version contained all required provisions.

In the same vein, the Commission asks (in ¶18) whether all LOAs should be have a Commission-imposed caption such as "An Order To Change My Long Distance Telephone Service Provider" or some other descriptive and less technical caption. Sprint submits that it is in the carriers' best interest to label the LOA in a manner which will be understandable by the consumer, and while Sprint fully shares the Commission's objectives, it does not believe that the Commission should be in the position of authoring the

industry's marketing materials and should not stand in the way of efforts by IXCs to tailor the caption of their LOAs to the particular audience they wish to address. If the Commission, through consumer complaint or otherwise, believes that any particular IXC has a misleading or uninformative caption, it can take appropriate action against that carrier.

The final issue on which the Commission seeks comment (in ¶19) is whether it is unreasonable for IXCs to use 800 numbers to accept PIC change orders from consumers. Sprint is at a loss to understand why the Commission has called such a well-established practice into question. IXCs rely heavily on customer-initiated toll-free calls as a source of new business. Typically, IXCs' print ads and television ads include an 800 number to facilitate contacts from potential customers. The IXCs' use of 800 numbers for this purpose is no different than the use of 800 numbers by airlines, hotels, mail order catalogues, etc. To prohibit IXCs from accepting PIC change orders from customers who call these 800 numbers would make it more cumbersome for consumers to change IXCs and thus would have both anti-consumer and anti-competitive consequences. Indeed, it could even be deemed an unwarranted intrusion on the commercial speech of IXCs.⁵

⁵ Cf. Chesapeake and Potomac Telephone Co. of Virginia, et al., v. U.S., 4th Cir. No. 93-2340, decided November 21, 1994.

Paragraph 19 also suggests that verification requirements, such as those imposed on carrier-initiated telemarketing sales, should be imposed on customer-initiated calls as well. Such a requirement would only add to the cost of long distance sales and would ultimately result in higher long distance prices for consumers. The Commission presents no evidence that there is a significant number of consumers who claim to have been "slammed" after a customer-initiated call to an IXC's 800 number. Sprint suspects that any cases of abuse in this regard are relatively infrequent and can be best dealt with on a case-by-case basis rather than by imposing costly verification requirements on all customer-initiated 800 calls.

Any restrictions on the use of 800 numbers to accept customer PIC change orders would stifle normal and legitimate competitive activities of IXCs, would tend to freeze existing market shares, and would raise costs, without any showing that the status quo is causing any significant harm to consumers today. If the Commission has evidence that it believes is sufficient to warrant further regulation in this regard, the Commission should issue a further notice of proposed rulemaking so that interested carriers will have an

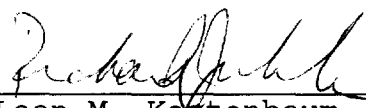
opportunity to address that evidence and the Commission's underlying concerns.⁶

IV. CONCLUSION

Sprint supports the Commission's efforts to codify its LOA requirements and to proscribe practices that can mislead or abuse customers. However, the Commission should be careful not to over-regulate in areas where a simple declaration of policy, coupled with enforcement action against specific abuses by specific carriers, would suffice to protect the public.

Respectfully submitted,

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⁶ Failure to do so could possibly constitute reversible error on the part of the Commission. See, e.g., Conn. Light and Power Co. v. N.R.C., 673 F.2d 525, 530-31 (DC Cir. 1982), cert denied, 459 U.S. 835 (1982).

CERTIFICATE OF SERVICE

I, Joan A. Hesler, hereby certify that on this 9th day of January, 1995, a true copy of the foregoing "**COMMENTS OF SPRINT**" was Hand Delivered to each of the parties listed below.


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